

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

PREAMBLE

1. Sections Affected

R4-22-103
R4-22-105
R4-22-106
R4-22-110
R4-22-111

Rulemaking Action

Amend
Repeal
Amend
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-1803(A)(10) and (C)(1) and 41-1003

Implementing statutes: A.R.S. §§ 32-1829, 32-1853.01, and 32-1859

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 1551, March 29, 2002

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Elaine LeTarte, Executive Director
Address: Arizona Board of Osteopathic Examiners in Medicine and Surgery
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5539
Telephone: (480) 657-7703
Fax: (480) 657-7715
E-mail: ExecutiveDirector@azosteoboard.org

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed amendment to R4-22-103 corrects a statutory subsection citation that became inaccurate as a result of a recent statutory amendment. The proposed repeal of R4-22-105, applying to the issuance of temporary licenses, is consistent with the repeal of legislation that had authorized the Board to issue temporary licenses. The proposed amendment to R4-22-106, consistent with the provisions of A.R.S. § 41-1092.09, expands the time period within which an aggrieved or interested party may request rehearing or review of a Board decision, and the time period within which the Board may determine on its own motion that rehearing is appropriate. The proposed amendments to R4-22-110 and R4-22-111 modify modifications to the Board's existing requirements and standards for medical assistants to conform to nationally recognized standards. Proposed R4-22-110 and R4-22-111 would more closely align the Board's standards for medical assistant training programs and authorized procedures for medical assistants with the standards already required by the Arizona Board of Medical Examiners. All other proposed amendments not specifically described in this summary are to improve clarity, conciseness, and ease of understanding, and do not change the substance of existing rules.

Notices of Proposed Rulemaking

6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

The proposed amendments of the rules will have minor economic impact on osteopathic physicians and medical assistants regulated under 4 A.A.C. 22, and therefore on the public. The primary costs of these proposed rules will be borne by the Secretary of State for publication of the rules and by the Board in promulgating them.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Elaine LeTarte, Executive Director

Address: Arizona Board of Osteopathic Examiners in Medicine and Surgery
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5539

Telephone: (602) 657-7703

Fax: (602) 657-7715

E-mail: ExecutiveDirector@azosteoboard.org

10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Board will accept written comments between 8:00 a.m. and 5:00 p.m. Monday through Friday at the location listed in item #9. The last date for submission of written comments will be May 22, 2003. The record will be closed upon the adjournment of the oral proceeding. The oral proceeding will be held:

Date: Thursday, May 22, 2003

Time: 3:00 p.m.

Address: Arizona Board of Osteopathic Examiners in Medicine and Surgery
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5539

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

12. **Incorporations by reference and their location in the rules:**

The "Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section II (A)(5)(a) through (c)," issued by the American Medical Association's Commission on Accreditation of Allied Health Education Programs, has been incorporated by reference into proposed R4-22-111. Copies of the Standards and Guidelines have been filed with the Secretary of State as part of this rulemaking proceeding, are on file with the Board, and may also be obtained from the Commission on Accreditation of Allied Health Education Programs at www.caahep.org/standards.

13. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-22-103. Accredited internships and residencies
R4-22-105. ~~Temporary licenses~~ Repealed
R4-22-106. Rehearing or review of decision
R4-22-110. Approval of Educational Programs for Medical Assistants
R4-22-111. Medical Assistants – Authorized Procedures

ARTICLE 1. GENERAL PROVISIONS

R4-22-103. Accredited internships and residencies

For purposes of ~~A.R.S. § 32-1822(3)(e)~~, A.R.S. § 32-1822(A)(3)(f), the equivalent of an accredited internship or approved residency is any of the following:

1. One or more years of a fellowship training program approved by the AOA or AMA.
2. A current certification by the AOA in an osteopathic medical specialty.
3. For those who were awarded a Doctor of Osteopathy degree in 1946 or earlier, a minimum of ten years of continuous active practice of osteopathic medicine and surgery immediately prior to application for licensure.

R4-22-105. Temporary licenses Repealed

- ~~A. Issuance. A temporary license shall be issued by the Secretary Treasurer with the approval of the Board, provided the applicant meets the requirements for licensure under the terms and conditions as set forth in A.R.S. § 32-1823.01. Temporary licenses will be numbered consecutively beginning with 100 and bearing the suffix "T", e.g. License No. 100 T.~~
- ~~B. Letter of temporary licensure: The Board shall issue a "Letter of Temporary Licensure" to the applicant bearing:~~
- ~~1. The date of issue;~~
 - ~~2. The date of expiration;~~
 - ~~3. The signatures of the President or Vice President and the Secretary Treasurer, and~~
 - ~~4. The seal of the Board.~~
- ~~C. Local emergency: A "local emergency" shall be deemed to exist wherever so declared by the Director of the Department of Health Services.~~
- ~~D. Inadequate availability of medical care: A lack of availability of adequate medical care in an Arizona community is deemed to exist if there is a critical shortage of physicians at the supported institutions or in any locale where there is no coverage or inadequate coverage by osteopathic physicians and surgeons.~~
- ~~E. The fee for the initial six month term of a temporary license is \$100.00. The fee for the renewal term of a temporary license is \$100.00.~~

R4-22-106. Rehearing or review of decision

- ~~A. Except as provided in subsection (G), any party in a contested case before the Arizona Board of Osteopathic Examiners in Medicine and Surgery Board who is aggrieved by a the decision rendered in such case may file with the Arizona Board of Osteopathic Examiners in Medicine and Surgery Board, not later than ten thirty days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds thereof on which the motion is based. For purposes of this subsection, a decision shall be deemed to have been served on a party when personally delivered or mailed by certified mail to the party at his party's last known residence or place of business.~~
- ~~B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Arizona Board of Osteopathic Examiners in Medicine and Surgery Board. A response to the motion may be filed by any other party to the proceeding within ten fifteen days after service of such the motion or amended motion by any other party. The Arizona Board of Osteopathic Examiners in Medicine and Surgery Board may require the filing of that the parties file written briefs upon on the issues raised in the motion and may provide for oral argument.~~
- ~~C. A The Board may grant rehearing or review of the a decision may be granted for any of the following causes materially affecting the moving party's rights:~~
- ~~1. Irregularity in the administrative proceedings of the agency Board or its hearing office or the prevailing party, or any order or abuse of discretion, whereby that deprived the moving party was deprived of a fair hearing.~~
 - ~~2. Misconduct of the Arizona Board of Osteopathic Examiners in Medicine and Surgery Board or its hearing officer or the prevailing party;~~
 - ~~3. Accident or surprise which could not have been prevented by ordinary prudence;~~
 - ~~4. Newly discovered material evidence which that could not with reasonable diligence have been discovered with reasonable diligence and produced at the original hearing;~~
 - ~~5. Excessive or insufficient penalties;~~
 - ~~6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or~~
 - ~~7. That the decision is not justified by the evidence or is contrary to law.~~
- ~~D. The Arizona Board of Osteopathic Examiners in Medicine and Surgery Board may affirm or modify the a decision or grant a rehearing to all or any of the parties and on all or part any of the issues for any of the reasons set forth in subsection (C). an An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~
- ~~E. No later than 20 thirty days after a decision is rendered issued, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which of the reasons it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may also grant a motion for rehearing for a reason not stated in the motion submitted by a party. In either case the order granting such a rehearing shall specify the grounds thereof on which the order is based.~~

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may ~~within ten days after such service~~ serve opposing affidavits, ~~which within fifteen days after service of the original motion and affidavits.~~ This period may be extended for an additional period not exceeding 20 twenty days by the Arizona Board of Osteopathic Examiners in Medicine and Surgery Board for good cause shown or by written stipulation explanation of the parties. Reply affidavits may be permitted.
- G. If in a particular decision the ~~Arizona Board of Osteopathic Examiners in Medicine and Surgery Board~~ makes specific finding that the immediate effectiveness of ~~such the~~ decision is necessary for the ~~immediate~~ preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for a rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review ~~of the Arizona Board of Osteopathic Examiners in Medicine and Surgery's final decision.~~ provided by law.
- H. For purposes of this Section the terms "contested case" and "party" ~~shall be defined as~~ have the meaning provided in A.R.S. § 41-1001.
- I. To the extent that the provisions of this ~~rule~~ Section are in conflict with the provision of any statute providing for rehearing of decisions of the ~~Arizona Board of Osteopathic Examiners in Medicine and Surgery Board~~, such statutory provisions shall govern.

R4-22-110. Approval of Educational Programs for Medical Assistants

- A. The Board shall approve an educational program for medical assistants when it has received all of the information specified in paragraph (B)(1) or (2), as applicable, concerning the program and the Board determines that the educational program provides at a minimum the following training: For purposes of this Section, a Board-approved medical assistant training program shall be a program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); the Accrediting Bureau of Health Education Schools (ABHES); a medical assisting program accredited by any accrediting agency recognized by the United States Department of Education; or a training program designed and offered by a licensed osteopath that meets or exceeds either of the three accrediting programs, and verifies the entry level competencies of a medical assistant referenced in R4-22-111.
1. ~~Cardiopulmonary resuscitation – 6 hours;~~
 2. ~~Patient assessment techniques, including blood pressure, temperature, height, weight, administering EKG tests and administering pulmonary function tests – 20 hours;~~
 3. ~~Injections and sterile techniques, including blood drawing and specimen collection, administering injections, and applying and changing dressings on wounds and injuries – 20 hours;~~
 4. ~~Physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic galvanation stimulation treatments, ultrasound therapy, massage therapy, traction treatments, and applying Transcutaneous Nerve Stimulation units and hot and cold packs – 20 hours;~~
 5. ~~Medical ethics and confidentiality requirements – 16 hours.~~
- B. A provider of ~~an educational~~ a training program for medical assistants, seeking approval of its program, shall submit ~~the following items~~ verification to the Board that its program meets the requirements stated in subsection (A). :
1. ~~Copies of all course materials;~~
 2. ~~Class content outlines on a session by session basis;~~
 3. ~~Sample examinations for each course;~~
 4. ~~A list of all instructors and their qualifications.~~
- C. An individual seeking approval of ~~an educational~~ a training program for medical assistants completed by that individual after December 31, 1985, shall submit the following items to the Board regarding the ~~educational~~ training program:
1. Name and address of ~~each educational~~ the training program provider;
 2. The individual's transcript, or a ~~A~~ list of the courses taken, and a description of the content of each course;
 3. ~~Documentation of completion of the educational program after December 31, 1985; and~~
 4. ~~Any other information which the Board may require in order to determine that the educational~~ Verification that the training program meets the requirements of subsection (A) and that the applicant has completed the educational training program.
- D. The Board shall not approve ~~an educational~~ a training program for an individual if the individual completed the program prior to January 1, 1986.
- E. Approval by the Board of ~~an educational~~ a training program for medical assistants shall remain valid so long as the program continues to satisfy the requirements of subsection (A).

R4-22-111. Medical Assistants – Authorized Procedures

- A. Procedures authorized for medical assistants to engage in shall include the following: A medical assistant may, under the direct supervision of an osteopathic physician or a physician assistant, perform the medical procedures listed in the Commission on Accreditation of Allied Health Education Program's "Standards and Guidelines for an Accredited Educational

Notices of Proposed Rulemaking

Program for the Medical Assistant, Section (2)(A)(5) through (6)” 1999 revision. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material, and is on file with the Board and with the Office of the Secretary of State.

B. Additionally, the following procedures are authorized for medical assistants working under the direct supervision of an osteopathic physician or physician assistant:

1. ~~Cardiopulmonary resuscitation;~~
2. ~~Patient assessment techniques, including blood pressure, temperature, height, weight, administering EKG tests and administering pulmonary function tests;~~
3. ~~Injections and sterile techniques, including blood drawing and specimen collection, administering injections, and applying and changing dressings on wounds and injuries;~~
4. Physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic ~~galva-~~
~~tion galvanic~~ stimulation treatments, ultrasound therapy, massage therapy, traction treatments, ~~and~~ applying Transcutaneous Nerve Stimulation units and hot and cold packs, ~~and administering small volume nebulizers.~~

NOTICE OF PROPOSED RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R14-4-149 New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 44-1821 and 44-1845
Implementing statute: A.R.S. § 44-1844
Constitutional authority: Arizona Constitution Article XV, §§ 6 and 13
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 2903, July 12, 2002
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sharleen A. Day, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7421
5. **An explanation of the rules, including the agency’s reasons for initiating the rules:**
Proposed A.A.C. R14-4-149 (“rule 149”) will exempt from registration requirements offers made in connection with a pending application. The exemption of offers that are made while a filing is pending is common practice in the industry. Sales can be made only after the filing is effective. Pre-effective offers take the form of the publication of tombstone advertisements and the distribution of preliminary or “red herring” prospectuses (collectively “preliminary offering materials”). In Arizona, pre-effective offers are addressed in a 1986 Commission policy statement that does not reflect the current needs of industry. The language in the policy statement references compliance with rules of the Securities and Exchange Commission, but does not specifically address the distribution of preliminary offering materials by issuers who must register in Arizona but are exempt from registering under the Securities Act of 1933. The Commission proposes to clarify this with the making of rule 149. All issuers in Arizona will be required to comply with rule 149 before distributing preliminary offering materials. The Commission believes the making of rule 149 will benefit industry and investors while maintaining investor protections.

Notices of Proposed Rulemaking

- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

The economic, small business, and consumer impact statement for the amendments to R14-4-149 ("the rule") analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of the proposed rule, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by the rule are nonquantifiable. The rule should benefit the Commission's relations with the regulated public because the industry can gauge interest in Arizona for an offering before it sells out in another jurisdiction while awaiting registration in Arizona. The public will benefit from being able to participate in an offering before it sells out in another jurisdiction while awaiting registration in Arizona. The Commission anticipates that the proposed rulemaking will not significantly increase monitoring, recordkeeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are only marginally increased.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Sharleen A. Day, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7421

- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: June 2, 2003
Time: 10:00 a.m.
Location: Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007
Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action at an open meeting with respect to the making of the proposed rule.

- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

- 12. Incorporations by reference and their location in the rules:**

The following materials are incorporated by reference in rule 149(A):

17 CFR 230.134 (2001)
17 CFR 230.255 (2001)
17 CFR 230.430 (2001)

- 13. The full text of the rule follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE SECURITIES ACT

Section

R14-4-149. Exemption from Registration for Offers Made in Connection with a Pending Application.

ARTICLE 1. IN GENERAL RELATING TO THE SECURITIES ACT

R14-4-149. Exemption from Registration for Offers Made in Connection with a Pending Application.

- A.** If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 C.F.R. 230.134 (2001), rule 255, 17 C.F.R. 230.255 (2001), or rule 430, 17 C.F.R. 230.430 (2001), which are incorporated by reference, shall be added to the class of transactions exempt under A.R.S. § 44-1844.
1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
 2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).
 3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of ten percent or more of any class of its equity securities, or any underwriter of the securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
 4. The issuer is not applying for registration under A.R.S. § 44-1902.
 5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
 6. The offering is not of speculative or high risk securities as defined by R14-4-118(C).
 7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.
 8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.
- B.** The rules incorporated by reference are on file with the Office of the Secretary of State. The incorporated material contains no later editions or amendments. Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, DC, 20402.